

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
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4 United States of America,
5 Plaintiff
6 v.
7 Ian Alexander Pincombe,
8 Defendant
9

2:14-cr-00178-JAD-GWF-1

Order Overruling Objections,
Adopting Reports and
Recommendations, and Denying
Motions to Dismiss

[ECF Nos. 111, 123, 127, 131, 132, 135,
138, 140, 144, 148]

10 Defendant Ian Pincombe stands charged with possession of child pornography and related
11 offenses.¹ After soured relationships with three lawyers,² Pincombe invoked his right to self-
12 representation, which Magistrate Judge Foley granted after a *Faretta* canvas.³ Pincombe has since
13 filed a series of dismissal motions and a motion to extend the pretrial motion deadline.⁴ The
14 magistrate judge denied Pincombe's motion to extend the deadline,⁵ and he recommends that I deny
15 Pincombe's dismissal motions.⁶ Pincombe objects to the magistrate judge's findings and
16 recommendations,⁷ and he moves me to reconsider the magistrate judge's order declining to extend
17 the pretrial motion deadline. Having reviewed the magistrate judge's findings and conclusions de
18 novo, I adopt his recommendations, deny Pincombe's dismissal motions, and decline to reconsider
19 the magistrate judge's order that denied Pincombe's request to extend the deadline.
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21 ¹ ECF 110 (minutes).
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23 ² ECF Nos. 36, 90, 110.

24 ³ ECF Nos. 111, 123, 138.

25 ⁴ ECF No. 118.

26 ⁵ ECF No. 126.

27 ⁶ ECF Nos. 127, 131, 140.

28 ⁷ ECF Nos. 135, 148.

1 **Discussion**

2 **A. Motion to reconsider [ECF No. 132]**

3 On December 29, 2016, I granted the parties' stipulation and continued Pincombe's trial date
4 to April 11, 2017, with pretrial motions due by February 13, 2017.⁸ A few weeks later, Pincombe
5 moved to dismiss counsel and proceed pro se.⁹ On February 8, 2017, the magistrate judge granted
6 that request, and Pincombe filed a timely motion to dismiss for lack of jurisdiction.¹⁰ Pincombe then
7 moved to extend the pretrial motion deadline¹¹ and, while that motion was pending, he filed an
8 untimely motion to dismiss for speedy-trial violations.¹²

9 On February 28, 2017, the magistrate judge entered an order indicating that the court would
10 consider both Pincombe's motion to dismiss for lack of jurisdiction and the untimely motion to
11 dismiss for speedy-trial violations, but he denied Pincombe's request to continue the pretrial motion
12 deadline for any other pretrial motions.¹³ Pincombe moves me to reconsider that order,¹⁴ and he has
13 since filed a "motion for relief"¹⁵ seeking dismissal of the indictment and various other forms of
14 relief, and a motion to dismiss based on *Brady/Giglio* violations.¹⁶

15 On March 24, 2017, I held a status conference to address the effect of Pincombe's filings on
16 the April 11th trial date. To allow the government an opportunity to respond to Pincombe's motions
17 and the court an opportunity to address them, I granted the government's oral motion for a
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19 ⁸ ECF No. 106.

20 ⁹ ECF No. 108.

21 ¹⁰ ECF No. 111.

22 ¹¹ ECF No. 117.

23 ¹² ECF No. 123.

24 ¹³ ECF No. 126.

25 ¹⁴ ECF No. 132.

26 ¹⁵ ECF No. 138.

27 ¹⁶ ECF No. 144.

1 continuance and continued the trial to May 23, 2017.¹⁷

2 Under Local Rule IB 3-1, a district judge may reconsider any pretrial matter referred to a
3 magistrate judge in a civil or criminal case if the movant shows that the magistrate judge's order is
4 clearly erroneous or contrary to law. Pincombe has not shown that Magistrate Judge Foley's error is
5 clearly erroneous or contrary to law. Pincombe—who has recently taken a “sovereign citizen”
6 approach to his defense and now denies even his own name¹⁸—simply rehashes his jurisdictional
7 arguments and claims that he has been kidnaped, assaulted, and falsely imprisoned.¹⁹ Pincombe does
8 not identify any non-frivolous pretrial motions that he needs additional time to file, this case has
9 been pending for nearly two years, and extending the pretrial motion deadline would result in further
10 delay. Additionally, the magistrate judge generously stated that the court would consider
11 Pincombe's untimely motion to dismiss for pre-trial violations. Accordingly, I decline to reconsider
12 the magistrate judge's order, and Pincombe's “motion for relief” and “motion to dismiss based on
13 Brady/Giglio violations” remain untimely under the magistrate judge's February 28, 2017, order.

14 **B. Reports and Recommendations [ECF Nos. 127, 131, 140]**

15 A district judge reviews objections to a magistrate judge's proposed findings and
16 recommendations de novo.²⁰ “The district judge may accept, reject, or modify the recommendation,
17 receive further evidence, or resubmit the matter to the magistrate judge with instructions.”²¹ The
18 standard of review applied to the unobjected-to portions of the report and recommendation is left to
19 the district judge's discretion.²² Local Rule IB 3-2(b) requires de novo consideration of specific

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21 ¹⁷ ECF No. 141.

22 ¹⁸ *See United States v. Mitchell*, 405 F. Supp. 2d 602, 603–06 (D. Md. 2005) (describing the
23 “sovereign citizen” belief system); *see also United States v. Neal*, 776 F.3d 645, 656, n.10 (9th Cir.
2015) (referencing *Mitchell*).

24 ¹⁹ ECF No. 132 at 2.

25 ²⁰ *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121–22 (9th Cir. 2003).

26 ²¹ *Id.*

27 ²² *Id.* (stating that a “district judge must review the magistrate judge's findings and recommendations
28 *de novo if objection is made*, but not otherwise”) (emphasis in original).

1 objections only.²³

2 ***1. Motion to dismiss for lack of jurisdiction [ECF No. 111]***

3 Pincombe moves to dismiss the indictment for lack of territorial jurisdiction. He argues that
4 the federal government does not have police power and lacks jurisdiction over this case. The
5 magistrate judge recommends that I deny the motion because Pincombe is charged with violations of
6 federal law, so the court has jurisdiction over this case under 18 U.S.C. § 3231. Pincombe objects
7 that the magistrate judge lacks authority to entertain the dismissal motion under 28 U.S.C. § 636, and
8 he argues that the magistrate judge is biased because he is “[h]iding behind the twisted interpretation
9 of the scope of the Bill of Rights,”²⁴ and he reiterates his argument that the federal government is one
10 of limited jurisdiction.

11 First, Pincombe ignores § 636(b)(1)(B), which states that “a judge may designate a magistrate
12 judge to conduct hearings . . . and to submit to a judge of the court proposed findings of fact and
13 recommendations for disposition” for any motion excepted in subparagraph (1)(A). Thus, although
14 the magistrate judge lacks authority to finally determine a motion to dismiss the indictment, he may
15 submit proposed findings and recommendations for the district judge. This is precisely the
16 procedure followed in this case and the procedure provided in this district’s local rules.²⁵ Thus,
17 Magistrate Judge Foley has authority to issue reports and recommendations on Pincombe’s dismissal
18 motions as he has done here, and the magistrate judge’s performance of these duties does not
19 demonstrate a bias against Pincombe.

20 As to the merits of Pincombe’s dismissal motion, the Commerce Clause empowers the
21 legislative branch to criminalize conduct, including the acts that Pincombe allegedly committed.²⁶

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23 ²³ See L.R. IB 3-2(b) (requiring *de novo* consideration of specific objections only); *Carillo v. Cate*,
24 2009 WL 2575888, at *1 (S.D. Cal. Aug. 17, 2009) (noting that “generalized objections” do not
require *de novo* review).

25 ²⁴ ECF No. 135 at 6.

26 ²⁵ Local Rule IB 1-4.

27 ²⁶ 18 U.S.C. § 2422(b) (coercion and enticement); 18 USC § 2252(a)(5)(B) (possession of child
28 pornography); and 18 USC § 2252(a)(2) & (b)(1) (receipt or distribution of child pornography).

1 Title 18 § 3231 of the United States Code in turn gives federal district courts original jurisdiction
2 over “all offenses against the laws of the United States.” Once, as here, a federal grand jury returns
3 an indictment charging the defendant with violations of federal law, a federal district court has
4 jurisdiction to hear a criminal case and impose a sentence.²⁷ Because Pincombe’s indictment is valid
5 on its face, I overrule Pincombe’s objection, adopt the magistrate judge’s report and
6 recommendation, and deny the motion to dismiss.

7 **2. Motion to dismiss for speedy-trial violations [ECF No. 123]**

8 The magistrate judge also recommends that I deny Pincombe’s motion to dismiss for speedy-
9 trial violations, reasoning that most if not all delay in this case is attributable to Pincombe—who
10 stipulated to all continuances of the trial date through April 11, 2017—and that Pincombe failed to
11 show actual prejudice from the delay.²⁸ Pincombe objects that he did not consent to his attorney’s
12 stipulations to continue the trial date on his behalf.²⁹

13 Under *Barker v. Wingo* courts consider four factors in determining whether a defendant has
14 been denied his right to a speedy trial: (1) the length of the delay, (2) the reason for the delay, (3) the
15 defendant’s prior assertion of the right, and (4) the prejudice resulting from the delay.³⁰ The Ninth
16 Circuit has explained that the length of the delay is a “threshold” factor, and a sufficiently lengthy
17 delay is necessary to trigger examination of the other three factors.³¹ The magistrate judge correctly
18 determined that the nearly two year delay in this case and the then-trial date of April 11, 2017, is
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21 ²⁷ See e.g., *United States v. Longoria*, 259 F.3d 363 (5th Cir. 2001), *on reh’g en banc*, 298 F.3d 367
(5th Cir. 2002).

22 ²⁸ ECF No. 131 at 5–6.

23 ²⁹ Pincombe did not file specific objections to the magistrate judge’s recommendation on the motion
24 to dismiss for speedy-trial violations, but he objected to some of the findings contained in that report
25 in his objection to the magistrate judge’s report and recommendation on Pincombe’s “motion for
26 relief.” ECF No. 148 at 6.

27 ³⁰ *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

28 ³¹ *United States v. Alexander*, 817 F.3d 1178, 1181 (9th Cir. 2016) (citing *United States v. Sears,
Roebuck & Co., Inc.*, 877 F.2d 734, 739 (9th Cir. 1989)).

1 sufficiently lengthy to trigger the balancing test.³²

2 As the Ninth Circuit recently reiterated in *United States v. Alexander*, who bears
3 responsibility for the delay is “the focal inquiry.”³³ “If the government can show that the delay was
4 wholly justifiable because it proceeded with reasonable diligence” the defendant must show that he
5 suffered actual prejudice from the delay.³⁴ But if the government intentionally or negligently caused
6 the delay, “prejudice may be presumed, and its weight in the defendant’s favor depends on the reason
7 for the delay and the length of the delay.”³⁵

8 The magistrate judge correctly determined that Pincombe bears primary responsibility for the
9 delays in this case. And the additional delay since the magistrate judge issued his recommendation is
10 also attributable to Pincombe because the court needed sufficient time to address his numerous
11 belatedly filed pretrial motions. Pincombe’s prior counsel’s stipulations to continue the trial date on
12 his behalf are properly attributable to him, and much of this delay is attributable to Pincombe’s
13 repeated requests for new counsel and to allow new counsel to get up to speed on the case. As the
14 magistrate judge noted, Pincombe never invoked his right to a speedy trial until he filed this
15 dismissal motion on February 28, 2017. And because the government did not cause the
16 delay—much less intentionally or negligently cause it—Pincombe is required to show actual
17 prejudice, which he fails to do. Accordingly, I overrule Pincombe’s objection, adopt the magistrate
18 judge’s report and recommendation, and deny the motion to dismiss for speedy-trial violations.

19 **3. Motion for relief [ECF No. 138]**

20 Pincombe’s third motion seeks to dismiss the indictment under Federal Rule of Criminal
21 Procedure Rules 3 and 4 and under the 4th, 5th, and 6th Amendments.³⁶ Magistrate Judge Foley

23 ³² ECF No. 235 at 15. See *United States v. Gregory*, 322 F.3d 1157, 1161–62 (9th Cir. 2003)
24 (“[D]elays approaching one year are presumptively prejudicial”).

25 ³³ *Alexander*, 817 F.3d at 1182 (citing *Sears*, 877 F.2d at 739)).

26 ³⁴ *Id.* at 1182 (internal citation omitted).

27 ³⁵ *Id.* (internal citation omitted).

28 ³⁶ ECF No. 138.

1 recommends that I deny this motion as untimely. He also explains that the criminal complaint in this
2 case sufficiently established probable cause for Pincombe's arrest, and a federal grand jury later
3 determined that there was probable cause to believe that Pincombe committed the charged offenses.
4 In his objection, Pincombe continues to argue that this court lacks jurisdiction and challenges the
5 magistrate judge's authority. Because Pincombe's objection lacks merit and his motion is late, I
6 overrule it, adopt the magistrate judge's report and recommendation, and deny Pincombe's motion as
7 untimely.

8 **4. Motion to dismiss for Brady/Giglio violations [ECF No. 144]**

9 Pincombe has also filed an untimely motion to dismiss for *Brady/Giglio* violations. The
10 deadline for filing a response has passed, and the magistrate judge has not yet issued a report and
11 recommendation. I deny this motion as untimely. But even if I had considered its merits, I would
12 deny it. Pincombe has not identified any exculpatory or impeachment evidence that the government
13 has failed to produce. Instead, he generally challenges the nature of the sting operation in this case
14 and rehashes some of the arguments that he raised through counsel in a (failed) motion to dismiss the
15 indictment based on outrageous government conduct.³⁷ For the reasons stated in the magistrate
16 judge's report and recommendation and my order on that motion,³⁸ Pincombe's motion fails on the
17 merits, and I deny it.

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27 ³⁷ See ECF Nos. 144, 41.

28 ³⁸ ECF Nos. 77, 79.

1 **Conclusion**

2 Accordingly, IT IS HEREBY ORDERED that Pincombe's objections [ECF Nos. 135, 148]
3 **are OVERRULED**, the magistrate judge's reports and recommendations [ECF Nos. 127, 131, 140]
4 **are ADOPTED**, and Pincombe's motions to dismiss [ECF Nos. 111, 123, 138, 144] **are DENIED**.

5 IT IS FURTHER ORDERED that Pincombe's motion to reconsider [ECF No. 132] is
6 **DENIED**.

7 April 13, 2017

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10 Jennifer A. Dorsey
11 United States District Judge
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